IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1769 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TAPUBHAI POPATBHAI RABARI

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

1. Special Civil Application No. 1769 of 2000

MR RA PATEL for Petitioners No. 1-2

MS BR GAJJAR,AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR HD CHUDASAMA for Respondent No. 3

MR HS MUNSHAW for Respondents No. 4-5

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/10/2001

ORAL JUDGEMENT

Rule. Ms.B.R.Gajjar, learned AGP waives service

for respondents no.1 and 2.

Mr.H.D.Chudasma waives service for respondent no.3 and Mr.H.S.Munshaw, learned Counsel waives service for respondent no.4.

1. The petitioners who are the residents of village Galsana of Dhandhuka taluka have filed this petition challenging the decision of the respondents to allot part of land of survey no.433 to weaker sections of society. According to the petitioners, survey no. 433 is a village pond land and, therefore, no allotment can be made for any other purposes.

2. It appears that the Deputy Collector passed an order annexure A dated 11.3.1999 whereby it was decided to allot 6 Acres 4 Gunthas of survey no.1 and 2 Acres of survey no.327-Part, in all 8 Acres 4 Gunthas free of charge to the landless weaker sections of society. It has been specifically mentioned that only those lands stated above except survey no. 433 be allotted under the scheme of the Government. However, by a subsequent order dated 22.3.1999, the Deputy Collector included 4 acres out of survey no. 433-Part for the purpose of allotment to landless persons. It is the contention of the petitioners that survey number 433 which is a village pond land cannot be allotted to anybody much less to weaker sections of society.

3. I have heard learned Counsel for the respondents at length and have also perused the affidavit-in-reply filed in the matter. The respondent no.3 Galsana Gram Panchayat, in its affidavit-in- reply, has pointed out that the respondent no.3 passed a Resolution No.3 dated 29.2.2000 in its general meeting requesting the Collector,Ahmedabad to assign waste land of survey no.1, 327 and 433 in Gamtal of village Galsana for constructing houses for weaker sections. According to the respondent no.3, the entire survey no.433 admeasuring 18 Acres of village Galsana was reserved for talav. However, talav was digged in about 10 acres of area and remaining 8 acres of land was waste land which was not useful for any purpose and out of the said land, 4 acres of land is demarcated for residential plots and remaining 4 acres land is not going to be used for digging talav. According to the respondent no.3, 4 acres of waste land of survey no. 433 is included in the area of Gamtal which is not used for Gam Talav. The respondent no.3 has also explained the position with regard to survey no. 1 and 327 and locus standi of the petitioners to file the present petition. However, I am not concerned with the same and, therefore, it is not necessary for me to

mention about those facts in the present order.

4. Respondent no.4- District Development Officer, in his affidavit-in-reply, has pointed out that pursuant to the complaint received from some of the villagers alleging irregularities and illegalities in the matter of allotment of plots of land to the weaker section as well as sale of the land to the members of other sections of the society, the District Development Officer, Ahmedabad District Panchayat issued a letter dated 6.3.2000 to the Taluka Development Officer, Dhandhuka to furnish his report in the subject matter. After issuance of notice by this Court, Taluka Development Officer was again instructed to furnish his report. Accordingly, reports annexures A and B were submitted by the Taluka Development Officer which are produced along with the affidavit-in-reply. It has been pointed out in the affidavit-in-reply that no land is allotted to the members of weaker sections or no land is sold to any member of other sections of the society after 1995 and the land granted by the Deputy Collector, Dholka to village Galsana admeasuring about 12 acres is lying as it is and in absence of any applications from the members of weaker sections of the village, no allotment is made.

5. After perusing affidavits filed in the matter, it appears that on the basis of the complaint received regarding irregularities and illegalities in the matter of allotment of plots, District Panchayat inquired into the case. However, according to the report submitted by the District Panchayat, allotment of land is yet to be made to the weaker sections of society. However, the Deputy Collector, by impugned order, in the instant case, has already accepted the resolution passed by Galsana Gram Panchayat to allot 12 acres 4 gunthas of land out of survey no.1, 327/Part and 433/ Part to the landless people belonging to the village. As far as survey no. 433 is concerned, admittedly it is a village pond. In the extract of village form no. 7/12, survey no. 433 is described as Gam Talav of Group Gram Panchayat of village Galsana and Gorasiya. In other words, both the panchayats are entitled to make use of the said land as a village pond. In the report submitted to the District Development Officer dated 29.9.2001 by the Taluka Development Officer, Dhandhuka, it has been clearly pointed out that there are certain pits which can be filled in and in the remaining portion of land where water is stored, even that portion of land also can be filled in so as to make the entire plot a plain land. It is also stated that the Gram Sabha, after passing unanimous resolution, decided to resume the land so that

people can stay near the village after making it a plain land. However, as the matter is pending in the High Court and that the encroachment is made on the said land, the activity of making plain land has not been carried out.

6. Reading the said report, there is no manner of doubt that the village panchayat, for the reasons best known to it, made a request for resumption of land which is only a village pond so that it can not only allot it to the persons belonging to the weaker sections of society, but to other persons at market price. In my opinion, the village pond cannot be permitted to be converted for allotment to anybody, may be a weaker section of society or to public in general. It is not possible for me to accept the submission that the entire land of survey no. 433 was not a village pond, but some portion was used as a village pond. The affidavits and the report on record will clearly go to show that by making encroachment on village pond, some persons have already started using village pond for residential purpose and now panchayat also wants to convert it for residential purpose. If at all the panchayat wants further land over and above the land of survey no. 1 and 327, it can do the same, but the land of village pond cannot be allowed to be utilised for residential purpose. I, therefore, find substance in this petition.

7. In the result, this petition is allowed. The order dated 22.3.1999 passed by the Deputy Collector, Dholka including 4 acres of survey no. 433/Part for the purpose of allotting the same to Galsana Gram Panchayat, is quashed and set aside. The respondents are restrained from making allotment of any part of survey no. 433 for the purpose of residential plots. The respondents are also directed to remove illegal encroachment from survey no. 433 in accordance with law and to ensure that the said land is used only as a village pond. Rule is accordingly made absolute with no order as to costs.

(K.R.Vyas,J.)

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